

PLANNING COMMISSION MINUTES

November 7, 2001

CALL TO ORDER:

Chairman Vlad Voytilla called the meeting to order at 7:05 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL:

Present were Chairman Vlad Voytilla, Planning Commissioners Bob Barnard, Gary Bliss, Eric Johansen and Dan Maks. Commissioners Russell Davis and Brian Lynott were excused.

Development Services Manager Steven Sparks, AICP, Senior Planner Colin Cooper, Planning Consultant Irish Bunnell, Associate Planner Scott Whyte, Assistant City Attorney Ted Naemura and Recording Secretary Sandra Pearson represented staff.

The meeting was called to order by Chairman Voytilla, who presented the format for the meeting.

VISITORS:

Chairman Voytilla asked if there were any visitors in the audience wishing to address the Commission on any non-agenda issue or item. There were none.

STAFF COMMUNICATION:

Development Services Manager Steven Sparks referred to the large amount of text amendments on the agenda, observing that the required public notification had been provided. Observing that the notices are generally worded, he explained that these amendments would not make any changes to zoning, uses or development, emphasizing that there would be no impact to individual property. He pointed out that these particular amendments specifically amend the procedures that are necessary for the review of development applications, as well as associated amendments throughout the code to assure internal consistency.

1 **NEW BUSINESS:**

2
3 Chairman Voytilla opened the Public Hearing and read the format for Public
4 Hearings. There were no disqualifications of the Planning Commission members.
5 No one in the audience challenged the right of any Commissioner to hear any of
6 the agenda items, to participate in the hearing or requested that the hearing be
7 postponed to a later date. He asked if there were any ex parte contact, conflict of
8 interest or disqualifications in any of the hearings on the agenda. There was no
9 response.

10
11 **PUBLIC HEARINGS:**

12
13 **A. CUP 2000-0034 – ANANDA CHURCH CONDITIONAL USE PERMIT**

14 This land use application has been submitted for the expansion of the current
15 elementary school program of Ananda Church to the adjacent residential
16 dwelling unit located at 4820 SW Angel Avenue, more specifically described
17 as Washington County Assessor's Map 1S1-16AD, Tax Lot 8500. The
18 affected parcel is zoned Urban High Density Residential (R-1), and is
19 approximately 0.23 acres in size. A Conditional Use Permit is required to
20 locate a church or school facility within the R-1 zoning district. A decision
21 for action on the proposed development shall be based upon the approval
22 criteria listed in Section 40.05.15.2.C.

23
24 Chairman Voytilla and Commissioners Johansen, Maks and Bliss all indicated
25 that they had visited the site and had no contact with any individual(s) regarding
26 the application.

27
28 Commissioner Barnard indicated that while he had not specifically visited the site,
29 he is familiar with it and had not had contact with any individual(s) regarding the
30 application.

31
32 Associate Planner Scott Whyte presented the Staff Report and described the
33 request to expand the current elementary school program at the church to the
34 adjacent single-family residential home on their property. He pointed out that the
35 current program involves students from Kindergarten through Grade 12 six days
36 per week. Observing that the current student enrollment is 22 children, he noted
37 that the additional classroom space would allow for a maximum student
38 enrollment of 40 students. Concluding, he recommended approval of the request,
39 with four specific Conditions of Approval, and offered to respond to any
40 questions or comments.

41
42 Commissioner Barnard referred to a letter from Bent and Parvati Hansen, dated
43 October 10, 2000 (Exhibit No. 4), requesting church members to enter and exit
44 the church parking lot only from the 4th Street access and refrain from utilizing
45 the Watson Avenue access, and questioned why this had been required.

1 Observing that this letter is dated over a year ago, Mr. Whyte commented that he
2 is not certain who had required this access restriction and why.

3
4 Referring to page 12 of the Staff Report, Commissioner Johansen noted that the
5 sanctuary presently seats up to eighty people, which would require twenty parking
6 spaces, observing that only eighteen parking spaces have been provided.

7
8 Mr. Whyte noted that the applicant is not proposing to expand the sanctuary,
9 agreeing that while they are lacking two of the parking spaces required by the
10 Development Code, they do meet the ratio required for such an educational
11 facility. He clarified that this consists of one parking space for every full-time
12 employee, adding that there are only three or four full-time employees.

13
14 Commissioner Maks clarified that the 0.25 is the Development Code's minimum
15 ratio, emphasizing that the number could not be less than what is required. He
16 questioned whether Mr. Whyte intended to state that there are eighteen parking
17 spaces in the parking lot and two additional parking spaces located near the house.

18
19 Mr. Whyte pointed out that the parking lot has sixteen parking spaces and two
20 additional parking spaces on the church site, for a total of eighteen parking
21 spaces. He noted that the residential structure has a long driveway that could
22 accommodate up to three or four vehicles.

23
24 Commissioner Maks emphasized that less than the required minimum of 0.25
25 would require a Variance.

26
27 Mr. Whyte assured Commissioner Maks that by including the long driveway, the
28 required twenty spaces are available.

29
30 Commissioner Maks pointed out that off-street parking is also available around
31 the site.

32
33 **APPLICANT:**

34
35 **SUSAN DERMOND**, the Minister of Ananda Church and the Director of the
36 school, expressed her opinion that Mr. Whyte has adequately explained what the
37 applicant is attempting to accomplish and offered to address any concerns
38 expressed by the Planning Commissioners or the public. She emphasized that
39 other unmarked parking is also available on the site, observing that she had
40 counted 22 cars in the lot during the Farmer's Market. Referring to the letter
41 mentioned by Commissioner Barnard, she noted that although she had not been
42 involved in the project at the time, she had been advised that the City of
43 Beaverton had expressed concern with too many vehicles entering Watson
44 Avenue from too many locations and preferred that all of the church members
45 utilize the same access. Concluding, she offered to respond to any questions or
46 comments.

1 **PUBLIC TESTIMONY:**

2
3 On question, no member of the public appeared to testify regarding this
4 application.

5
6 On question, staff had no further comments regarding this application.

7
8 On question, City Attorney Ted Naemura indicated that he had no comments or
9 questions regarding this application.

10
11 The public portion of the Public Hearing was closed.

12
13 Commissioner Barnard observed that he is concerned with both traffic and
14 parking issues, adding that he would cautiously approve this application with such
15 a limited amount of parking, particularly in this downtown area.

16
17 Commissioner Maks stated that he anticipates no significant issues with the
18 expansion, as proposed, and would support a motion for approval, he would like
19 to remind staff to make special efforts to review parking issues on any future
20 applications.

21
22 Chairman Voytilla expressed his support of the application, adding that he is also
23 concerned with parking and traffic issues that might be created by any future
24 expansion.

25
26 Commissioner Bliss stated that based upon the minimal proposed expansion, he is
27 also in support of the application.

28
29 Commissioner Johansen stated that he supports the application, which is a
30 minimal expansion and would have a minimal impact upon the surrounding
31 neighborhood, emphasizing that it also meets the applicable approval criteria.

32
33 Commissioner Maks **MOVED** and Commissioner Barnard **SECONDED** a
34 motion that CUP 2000-0034 – Ananda Church Conditional Use Permit be
35 approved, based upon the testimony, reports and exhibits presented during the
36 Public Hearing on the matter and upon the background facts, findings and
37 conclusions found in the Staff Report dated October 31, 2001, including
38 Conditions of Approval Nos. 1 through 4.

39
40 Motion **CARRIED**, unanimously.

41
42 7:28 p.m. – Mr. Whyte left.

43
44 **B. TA 2001-0001 – CHAPTER 40 UPDATE TEXT AMENDMENT**

45 The City of Beaverton has proposed a comprehensive update of Chapter 40
46 (Permits and Applications) of the Beaverton Development Code. The

proposed amendments will establish the development applications to be required in the City, the threshold(s) for determining the proper type of application to be required, and the approval criteria by which the application(s) will be evaluated. The existing Development Code contains many of the same applications, thresholds, and approval criteria. The proposed amendment will modify the existing applications, thresholds, and approval criteria and add new applications, thresholds, and approval criteria.

C. TA 2001-0002 – CHAPTER 50 UPDATE TEXT AMENDMENT

The City of Beaverton has proposed a comprehensive update of Chapter 50 (Procedures) of the Beaverton Development Code. The proposed amendments will establish the procedures by which development applications will be processed in the City. The procedures include, but are not limited to, initiation of an application, withdrawal of an application, application completeness, Type 1 through Type 4 application processes, and appeal(s), expiration, extension, and modification of decisions. The proposed amendment will modify existing procedures found in the Development Code and establish new procedures to be made a part of the Code.

D. TA 2001-0003 – CHAPTER 10 UPDATE TEXT AMENDMENT

The City of Beaverton has proposed a comprehensive update of Chapter 10 (General Provisions) of the Beaverton Development Code. The proposed amendments will establish the legal framework of the Development Code. Topics include, but are not limited to, compliance, interpretation, zoning districts, zoning map, fees, conditions of approval, enforcement, and development review participants. Development review participants include the City Council, Planning Commission, Board of Design Review, Facilities Review Committee, and the Community Development Director.

E. TA 2001-0004 – CHAPTER 60 UPDATE TEXT AMENDMENT

The City of Beaverton has proposed amendments to Chapter 60 (Special Requirements) of the Beaverton Development Code. The proposed amendments have been necessitated by the comprehensive updates to Chapter 40 and Chapter 50 of the Development Code. The proposed amendments will establish new special requirements for Land Division Standards and Planned Unit Development. The amendments propose to modify existing Special Use Regulations for Accessory Dwelling Unit, Accessory Uses and Structures, as well as existing special requirements for Transportation Facilities and Trees and Vegetation. The amendments also propose to delete the provisions pertaining to Historic Preservation and Temporary Use Permits.

F. TA 2001-0005 – CHAPTER 90 UPDATE TEXT AMENDMENT

The City of Beaverton has proposed amendments to Chapter 90 (Definitions) of the Beaverton Development Code. The proposed amendments have been necessitated by the comprehensive updates to Chapter 40 and Chapter 50 of the Development Code. The proposed amendments will add definitions of

new terms and amend existing definitions of terms use in the Development Code.

G. TA 2001-0007 – BEAVERTON MUNICIPAL CODE TEXT AMENDMENT

The City of Beaverton has proposed amendments to the Beaverton Municipal Code. The proposed amendments have been necessitated by the comprehensive updates to Chapter 40 and Chapter 50 of the Development Code. The proposed amendments will ensure that there is consistency between the provisions of the Municipal Code and the Development Code.

H. TA 2001-0008 – CHAPTER 20 UPDATE TEXT AMENDMENT

The City of Beaverton has proposed amendments to Chapter 20 (Land Uses) of C-code. The proposed amendments have been necessitated by the comprehensive updates to Chapter 40 and Chapter 50 of the Development Code. The proposed amendments will also reorganize the Multiple Use zoning (Section 20.20) to make the Multiple Use zoning text read more clearly.

Mr. Sparks introduced Planning Consultant Irish Bunnell and presented the Staff Reports, explaining that they are very pleased to provide these amendments, which are the culmination of the efforts of many individuals throughout a period of four long years. He emphasized that this project is an attempt to improve the development review and application processes, pointing out that the current Development Code is complicated and includes gaps that require staff to perform interpretations.

Mr. Sparks pointed out that in an effort to streamline the processes within Chapter 50, staff hopes to have the Development Code answer any questions, rather than forcing staff or different boards and commissions to provide interpretations.

Referring to Chapter 40, regarding Applications, Mr. Sparks emphasized that the current Development Code is also complicated and not very helpful, adding that it is necessary to clarify the applications and approval criteria or objectives. Concluding, he offered to respond to questions and comments.

Commissioner Maks expressed his opinion that although he does have questions of staff, the public should be allowed to provide their testimony first.

PUBLIC TESTIMONY:

TODD SADLO, the attorney representing *Home Depot, Inc.*, commented that he has some issues with the way these amendments are packaged, adding that he might have to return to the eighth grade several times. Observing that his client is now going through the design review process and avoiding the Planning Commission regarding the former *Montgomery Ward* site as a new location for

1 their store, he noted that in the Community Service (CS) zone they are permitted
2 to have up to five percent of the gross square footage of the store used for outdoor
3 sales, display and storage. He mentioned that under the existing Temporary Use
4 provisions of the Development Code, his client had expected to be able to
5 occasionally obtain permits from the Planning Director for Temporary Sales of
6 items such as seasonal nursery supplies, some of which do not survive well
7 indoors. He pointed out that the proposed Development Code restricts some of
8 the general purposes in the current Development Code, and only allows this use
9 for holiday vegetation, fireworks, circuses, carnivals, animal rides and other
10 similar activities, and excludes the sale of live plant materials. He stated that he is
11 proposing that provisions be put back into the Development Code allowing for
12 certain temporary uses that have been excluded, adding that he has provided some
13 suggested language for this purpose.

14
15 Commissioner Maks requested clarification of what Mr. Sadlo is proposing.

16
17 Mr. Sadlo informed Commissioner Maks that his client is requesting permission
18 to utilize more than five percent of the gross square footage of the building in the
19 parking lot, or an equivalent area, for outdoor sales, storage and display.
20 Observing that his client has no problems with applying conditions to this use, he
21 emphasized that they would simply like to be able to order the materials more
22 efficiently than they are now able to do, adding that the proposed Development
23 Code would not allow them this use at all. He noted that this use is now
24 considered a Type 1, although the Planning Director makes a determination for
25 such a use beyond thirty days, which can be appealed to the Planning
26 Commission.

27
28 Commissioner Maks pointed out that many items that are stored outside on a
29 seasonal basis, such as barbeques and lawnmowers, are not living and noted that
30 Mr. Sadlo's proposed language would prohibit the outside storage of fertilizer,
31 barbeques and lawnmowers.

32
33 Mr. Sadlo advised Commissioner Maks that he might be referring to a different
34 store located in a different zone with different requirements.

35
36 Commissioner Maks observed that he is referring to three particular stores.

37
38 Mr. Sadlo mentioned out that while the Murray/Scholls store is located within a
39 mixed zone, he is not familiar with the zoning at the Jantzen Beach store. He
40 informed Commissioner Maks that under this provision, the outdoor storage of
41 barbeques and lawnmowers would not be permitted. Observing that every
42 attempt is being made to design the site to be aesthetically pleasing, he
43 emphasized that the managers would receive clarification of what is and is not
44 allowed in order to avoid creating a large mess.

45

1 Commissioner Maks mentioned that it would also be necessary to maintain
2 parking standards.

3
4 Mr. Sadlo clarified that his client would like the City of Beaverton to take under
5 consideration that they are attempting to utilize their sites more efficiently, adding
6 that they are willing to make necessary adjustments to the parking situation.

7
8 Commissioner Barnard questioned the average store size footprint for *Home*
9 *Depot, Inc.* and the average outside sales area they would like to be able to use.

10
11 Mr. Sadlo stated that the average store size is approximately 120,000 square feet
12 and that in terms of the existing proposal, his client would like to use
13 approximately 6,000 square feet for outside sales, adding that they would like to
14 locate this along the front of the store and a portion of the parking lot that is not
15 being applied to the parking standards minimum. He pointed out that there would
16 be a small amount of additional parking over the minimum and less than the
17 maximum available for the temporary sales of plant materials.

18
19 Commissioner Barnard expressed his opinion that it is necessary to include
20 provisions within the Development Code that allows businesses to function
21 effectively, and questioned whether the five percent could be increased to six or
22 seven percent.

23
24 Mr. Sadlo pointed out that the City of Beaverton has a pretty tight Development
25 Code in comparison with other local entities. He mentioned that the City of
26 Tigard has a more generalized approach to this issue, noting that he believes that
27 the plant material is singled out.

28
29 **MATTHEW GRADY**, representing *Gramor Development*, commended the
30 efforts of staff in updating the Development Code, observing that as a former
31 member of staff he had personally experienced the frustrations of attempting to
32 implement this from the City of Beaverton's perspective. He expressed his
33 opinion that these efforts are a huge step forward towards clarification of the
34 Development Code, emphasizing that the entire process has occurred over a
35 period of several years. He referred to Chapter 20, with regard to development
36 control areas, pointing out that he had always attempted to create a mixture so that
37 there would not be too much of one land use versus another land use. Referring
38 to Chapter 40 – Adjustments, specifically Section 40.10, noting that any
39 adjustments that were allowed earlier to the standards have been completely
40 removed from the Town Center, in conjunction with some appeals to the City
41 Council that occurred in 1999. He discussed Type 2 and Type 3 Design Reviews,
42 observing that under certain circumstances, an applicant might have a Condition
43 of Approval allowing them to widen a road or some other such action. He pointed
44 out that if this specific Condition of Approval had been contemplated at the time
45 the original application had been submitted, the applicant would have to repeat
46 the entire process, including the neighborhood meeting. He emphasized that this

1 brings the application process beyond the 120-day approval process, which could
2 really jeopardize any applicant who is attempting to complete an application,
3 particularly if it is dependent upon a site development process.
4

5 Referring to Fee Ownership Subdivisions on page 86, Mr. Grady observed that it
6 appears to be limited to commercial, industrial and mixed-use zones and that
7 residential has been excluded. He pointed out that residential development is
8 limited to a Planned Unit Development (PUD) or a major adjustment process,
9 noting that the PUD mechanism, which is encouraged for residential
10 development, has eliminated the five-acre minimum. Observing that a certain
11 amount of open space is required, he expressed his opinion that this is not always
12 feasible or necessary and could be addressed through some type of major
13 adjustment.
14

15 Mr. Grady referred to Chapter 60, specifically Section 60.15.10, Item 5, on page
16 6, which addresses homeowner's associations and CC&R's created in order to
17 maintain common areas. Observing that this has been required all along, he
18 mentioned that he had been required to provide a maintenance agreement on a
19 certain project. He emphasized that there should be clear expectations indicating
20 exactly what should be required on all developments, specifically a maintenance
21 agreement, in addition to the CC&R's, for the maintenance of common areas.
22

23 Mr. Grady discussed Section 60.55.40, Item 1, on page 37, which addresses
24 access standards, pointing out that staff's changes, specifically to reduce the width
25 of a lot abutting a public street from 25 feet to 20 feet, is helpful. He further
26 stated that on certain applications, abutting a public street is not permitted, adding
27 that there should be some additional wording providing that "unless an acceptable
28 access easement is recorded as part of the lot creation." He described another
29 mechanism, which he referred to as a fee ownership, which permits deviation
30 from the standard and actually record an access easement to that lot. He
31 emphasized that there should be clarification that access is permitted with some
32 form of acceptable easement. Concluding, he noted that he had addressed his
33 major concerns involving the proposed code updates, he offered to respond to any
34 questions or comments.
35

36 Commissioner Maks expressed appreciation to Mr. Grady for his input, observing
37 that after spending approximately four years serving on this effort, Mr. Platt may
38 be stepping aside, and suggested that Mr. Grady might be willing to serve in this
39 capacity the next time the code is updated. He requested clarification of Mr.
40 Grady's recommendations and suggestions regarding the CC&R issue.
41

42 Observing that the majority of the problems with this issue involves the Building
43 Permit process, Mr. Grady described difficulties he had encountered in fulfilling
44 this requirement that he had not previously been aware of.
45

1 Commissioner Maks expressed his opinion that in essence, the CC&R's are
2 worthless, adding that they are civilly enforced. He pointed out that if a neighbor
3 is dumping old paint into a preserved area, another neighbor might threaten to
4 sue, or in a major situation, the City might be able to take some sort of action.

5
6 Observing that he had dealt with a lot of PUDs in the past, Chairman Voytilla
7 stated that these situations sometimes involve shared private roads and parking
8 lots, including drainage lines and other common elements that require review. He
9 pointed out that the homeowner's association also possesses a document called
10 the By-Laws, which specify how this association is to operate. He suggested the
11 possibility of providing a maintenance agreement between the homeowner's
12 association and a vendor that would provide the maintenance, adding that while
13 this could be completed prior to the improvements, it is difficult to put a price on
14 services when the extent of the maintenance has not yet been determined.

15
16 Noting that this is a fairly new requirement, Mr. Grady suggested that staff
17 discuss the issue with the Building Department to determine if proper wording
18 could be referenced in this process to ensure that an applicant is aware of all of
19 the requirements from the beginning.

20
21 Chairman Voytilla questioned whether Mr. Grady had actually been required to
22 consider true agreements with a maintenance provider.

23
24 Mr. Grady informed Chairman Voytilla that this was not the case, that the
25 agreement had actually involved the homeowner's association.

26
27 Commissioner Maks referred to Type 2 and Type 3 Design Review, on pages 37
28 and 42, requesting that Mr. Grady point this out for him.

29
30 Mr. Grady indicated Item No. 20 in the Type 2 Design Review, addressing
31 widening or realignment of an existing transportation facility with existing right-
32 of-way or easement. Referring to this as one of the triggers, he added that this is
33 similarly worded for Type 3 Design Review on page 42. He agreed with
34 Commissioner Maks' assessment of the situation, specifically that he would
35 prefer not to complete a 120-day project and then use an additional 120 days to
36 widen the road.

37
38 **ERNIE PLATT**, representing the *Homebuilders' Association of Metro Portland*,
39 observed that he had enjoyed serving on the Code Review Advisory Committee
40 (CRAC), noting that the proposed amendments had involved a great amount of
41 efforts and ideas. He expressed his support, emphasizing that this was a long
42 process and involved a diverse group of individuals.

43
44 Mr. Platt pointed out that one issue in Chapter 60 had not been addressed to his
45 complete satisfaction, and referred to the top of page 6, numeral 4. He noted that
46 this section addresses specific trees, and provides that no tree shall be removed in

1 the development of land development applications, except those designated in the
2 public rights-of-way and proposed easements. Observing that this is unique to the
3 land development section, he pointed out that under the normal site development
4 section, for any other kind of use, this discussion would not even be occurring.
5 He described this issue as causing particular heartburn in the entire process of
6 creating a subdivision or land partition on any type of a piece of property that has
7 any amount of slope or tree cover. He further clarified that this forces a developer
8 into the situation of designing a project on which the entire site can not be graded,
9 adding that the dirt within the areas outside of the areas with street right-of-way
10 because they have trees on them. He expressed his opinion that it would be
11 advantageous not to have this restriction, noting that while the Planning Director
12 is able to approve a deviation from this requirement, he still feels that this
13 situation has the potential to cause significant problems. Concluding, he offered
14 to respond to any questions or comments.

15
16 Observing that the CRAC Committee had participated in some vibrant discussion,
17 Commissioner Maks pointed out that they had agreed more than we disagreed.
18 He requested clarification of whether Mr. Platt's issue had been resolved within
19 some other section.

20
21 Mr. Platt informed Commissioner Maks that this issue had been resolved within
22 other sections, emphasizing that only the land partitioning section has not been
23 appropriately addressed.

24
25 **ASHETRA PRENTICE** expressed her appreciation of the more readable and
26 easily understood codes and pointed out that changes in proposals are not
27 addressed in the code. She expressed her concern with the approval of incomplete
28 applications, emphasizing that all facts should be completed and submitted prior
29 to approval. She discussed a subdivision that had been developed in her
30 neighborhood, pointing out that although no retaining wall had been required or
31 shown on the original plan, several years later, a huge retaining wall had been
32 approved without the knowledge of the adjacent property owners. She noted that
33 while the engineering requirements had still not been submitted, the developer
34 had begun excavation and cut a huge cliff. Observing that a portion of her land is
35 now considered unbuildable due to the engineering structural requirements, she
36 pointed out that she had brought this to the attention of the City of Beaverton,
37 who had stopped the developer at that point. She emphasized that due to these
38 actions, her property is now the slide area, adding that if the wall falls, her
39 property would slide. She expressed her concern that no provision exists within
40 the code to prevent this problem, adding that the City of Beaverton is the only
41 place where a partial plan can be submitted and approved, and that this plan can
42 change by the time the developer reaches the site development portion of the
43 process. She emphasized that this should be controlled in some way, noting that
44 the public is only provided ten days in which to express any concerns. Observing
45 that it is difficult to address what she is not aware of, she stated that the ten days
46 to appeal or express concern is adequate, provided that all of the facts are in and

1 that this is addressed prior to approval. She emphasized that if this is submitted
2 following the site approval, the public no longer has any opportunity to express
3 their concerns. Referring to the quantity of houses within a development, she
4 pointed out that a 265-unit development had been approved by the Planning
5 Director, noting that this particular application had been addressed by neither the
6 Planning Commission nor the Board of Design Review. She stated that such a
7 development should be considered and should be required to pass more stringent
8 criteria.

9
10 Chairman Voytilla advised Ms. Prentice that zoning dictates the use of property,
11 adding that various densities are available which quantify the maximum allowed.

12
13 Ms. Prentice requested clarification of what causes an application to be reviewed
14 by the Planning Commission and/or the Board of Design Review.

15
16 Observing that this issue is defined within the Development Code, Chairman
17 Voytilla noted that the Board of Design Review, rather than the Planning
18 Commission, reviews subdivision applications.

19
20 Commissioner Maks defined this situation as an outright use, observing that a
21 property owner with a lot within an R-7 residential zone is entitled to construct a
22 home on his land, adding that if he owns ten lots, he can construct ten homes. He
23 clarified that because the property is zoned for this outright use, the application
24 does not require consideration by a hearings body. He explained that the Board of
25 Design Review is established to govern design with some outright uses, adding
26 that the Planning Commission basically addresses the Development Code and
27 Comprehensive Plan and unusual issues, such as Conditional Use Permits (CUPs)
28 and PUDs.

29
30 Chairman Voytilla emphasized that although the review the design issues, the
31 Board of Design Review does not review all subdivisions, noting that the
32 Planning Director reviews subdivisions.

33
34 Ms. Prentice mentioned a section that indicates that a developer is required to start
35 construction of a phase in a project within five years, pointing out that there is no
36 section that addresses the completion of this construction.

37
38 Chairman Voytilla advised Ms. Prentice that this is a difficult issue, observing
39 that with larger projects continuing throughout a period of several years, the
40 progress and completion is often variable and difficult to anticipate. He
41 emphasized that the current uncertainties in the economic situation made this
42 situation even more difficult.

43
44 Ms. Prentice pointed out that she has lived next to an ongoing development for 6-
45 1/2 years, emphasizing that there appears to be no end in sight.

1 Chairman Voytilla informed Ms. Prentice that he is not able to count the multiple
2 subdivisions that have occurred within his own neighborhood over the same
3 period of time.
4

5 Ms. Prentice referred to the Municipal Code, observing that the City of Beaverton
6 has a construction ordinance limiting construction to 7:00 a.m. until 7:00 p.m.
7 seven days per week, requesting that this activity should be confined to six days
8 per week. She expressed concern that her family had been subjected to 21
9 straight days of work on the adjacent development before there had been a day
10 off, adding that this can be quite exhausting.
11

12 Referring to Chapter 20, specifically page 4, Ms. Prentice mentioned that building
13 height a site development issue, and questioned whether height is determined
14 during the approval stage.
15

16 Commissioner Maks commented that each zoning district provides for different
17 height restrictions.
18

19 Planning Consultant Irish Bunnell clarified that within the current Development
20 Code, in order to exceed the allowed height within a zone, a CUP is required.
21 Observing that this is not actually appropriate, he pointed out that height is not a
22 use and that the proposed language provides for a variance or adjustment process
23 to be available for an applicant wishing to exceed the allowed height. He noted
24 that this requirement would be determined right up front with the approvals.
25

26 Ms. Prentice expressed concern with the proposed reduction from 500 to 300 feet
27 for notifying neighbors of any land use action, requesting that this be left at 500
28 feet. She suggested that the Planning Director's Decision state the date and time
29 by when an appeal must be received, rather than simply stating ten calendar days.
30 Expressing her opinion that this causes confusion, she proposed that this be
31 changed from ten calendar days to ten working days from the date that a Land
32 Use Order is signed.
33

34 Commissioner Maks clarified that the reduction from 500 feet to 300 feet is
35 dependent upon which type of application has been submitted.
36

37 Mr. Sparks explained that both a land division and a Planning Director's
38 interpretation are Type 2 applications, adding that a Type 2 Design Review
39 includes an entire listing of varying thresholds.
40

41 Observing that State law only requires notification to property owners within 100
42 feet, Commissioner Maks expressed his opinion that 300 feet is adequate and that
43 the greater the potential impact of the application, the greater the amount of
44 property owners that are notified.
45

1 Ms. Prentice stated that if a property owner does not express written concerns
2 within ten days of a Planning Director's Interpretation, they lose the right to a
3 subsequent appeal.

4

5 Commissioner Maks advised Ms. Prentice that staff should address this issue,
6 noting that notification is only received following a Type 1 decision. Referring to
7 her request regarding business days versus calendar days, he emphasized that this
8 is not feasible when considering the 120-day rule.

9

10 Ms. Prentice suggested that all documentation regarding a Planning Director's
11 Interpretation should be made available for any member of the public who would
12 like to review the information. She pointed out that while the Planning Director's
13 Interpretation to which she is referring was dated on the fifth of the month, she
14 was unable to review the Conditions of Approval until the tenth of the month,
15 which depleted five days of the ten day appeal period.

16

17 Chairman Voytilla expressed appreciation to Ms. Prentice for her testimony.

18

19 Suggesting that the public portion of the Public Hearing should be closed at this
20 time, Commissioner Maks expressed his opinion that the Public Hearing should
21 be reopened at a future meeting to receive further testimony only on issues that
22 have been raised.

23

24 On question, Commissioner Johansen was assured that written testimony would
25 still be accepted.

26

27 The public portion of the Public Hearing was closed.

28

29 Commissioner Maks questioned the status of appeals for Type 1 and Type 2
30 applications.

31

32 Mr. Sparks referred to Chapter 50, observing that the documentation required for
33 an appeal is clarified within this Chapter. He discussed Item No. 2 on page 36,
34 specifically a. through e., which lists the items that must be included within an
35 appeal. He noted that 2.c addresses specification of evidence or written testimony
36 provided with the application to which the decision of the appeal is contrary,
37 observing that this means that an individual who submits written testimony
38 contrary to the decision gains standing on the appeal. He further clarified that any
39 individual who has not participated or provided any evidence in the decision-
40 making process does not have any standing for an appeal.

41

42 Commissioner Maks requested clarification of the notification process with regard
43 to a Type 1 application.

44

45 Mr. Sparks explained that a Type 1 application either does or does not meet
46 applicable code criteria, which determines whether or not the application is

1 approved, pointing out that the appeal is only to the applicant since Conditions of
2 Approval could be imposed upon any approval.

3
4 Commissioner Maks requested clarification of the notification process with regard
5 to a Type 2 application.

6
7 Referring to the top of page 40, Mr. Sparks mentioned that Item 2 again addresses
8 items that must be included within the appeal, at which point the Planning
9 Director will determine whether these requirements have been met and the appeal
10 is actually valid. He discussed Item 2.c, which states that reference to written
11 evidence provided by the decision-making authority is contrary to the decision,
12 clarifying that this indicates that to be a party of record in the ability to appeal, it
13 is necessary to have participated in the decision-making process.

14
15 Mr. Bunnell observed that this issue is addressed advertently in the first paragraph
16 of page 40, emphasizing that in order to appeal, any individual besides the
17 applicant must have provided testimony during the decision-making process.

18
19 Commissioner Maks requested clarification of the notification procedure with
20 regard to a Type 2 application.

21
22 Mr. Sparks stated that a Type 2 application requires notification to property
23 owners within 300 feet of the proposed development, as opposed to 500 feet,
24 adding that this notification is provided prior to the approval.

25
26 Commissioner Maks clarified that a Type 2 application provides for notification
27 to property owners within 300 feet of the proposed development, prior to the
28 approval, adding that any individual with any issues or objections must submit
29 their concerns to be entered into the record in order to be considered for an
30 appeal.

31
32 On question, Mr. Sparks informed Commissioner Maks that a Home Occupancy
33 Permit could involve either a Type 1 or a Type 2 application.

34
35 Commissioner Maks explained that a Type 1 application does not include any
36 employees, and that a Type 2 application includes employees and generates
37 traffic. He pointed out that the City of Beaverton is still providing notification to
38 property owners within 300 feet of this type of minimal permit process,
39 emphasizing that any individual who receives this notification and has any issues
40 with a Type 2 or Type 2 application needs to participate in the process from the
41 very beginning.

42
43 Mr. Sparks mentioned that there is a listing of the seventeen different Type 2
44 applications on page 5 of the Staff Report – TA 2001-0001 – Chapter 40 Update
45 Text Amendment.

1 Commissioner Johansen requested clarification of whether the notification only
2 describes the application that has been submitted and not that a preliminary
3 decision has been made.
4

5 Mr. Sparks clarified that within the current code, only a notice of decision is sent
6 to the affected property owners, emphasizing that no notification is mailed out
7 prior to the decision. He further explained that all new Type 2 and Type 3
8 applications would receive prior notification, adding that any individual who
9 participates would receive notification of the decision.
10

11 Commissioner Maks expressed his agreement with Ms. Prentice's suggestion of
12 changing construction hours from 7:00 a.m. to 7:00 p.m. seven days per week to
13 7:00 a.m. to 7:00 p.m. six days per week.
14

15 Mr. Sparks observed that while the Planning Commission does not have the
16 authority to revise these construction hours, this could be a possible mini-
17 amendment to submit to the City Council for future consideration. He further
18 advised Commissioner Maks to submit a letter to Mayor Drake requesting to
19 attend a future City Council Meeting to make that proposal.
20

21 Commissioner Maks clarified that at times, an application deemed complete could
22 mean various things, emphasizing that the bottom line is that an applicant has the
23 right to say this is all I am submitting, at which point the City of Beaverton must
24 go through process.
25

26 Mr. Sparks referred to a number of issues mentioned by Mr. Sadlo, Mr. Grady and
27 Mr. Platt, adding that he would like to take this opportunity to respond.
28

29 Referring to Mr. Sadlo's comment that the Community Service (CS) zone had
30 been omitted from the temporary use section, Mr. Sparks noted that on page AP-
31 112 of the Development Code, No. 4 of the approval criteria references the
32 regional center, town center and multiple-use zone districts, adding that this is
33 specific only to proposals which require temporary non-mobile sales, such as
34 sidewalk dining, in the right-of-way. He further explained that temporary non-
35 mobile sales on private property could apply to any zoning district, adding that
36 Mr. Sadlo's client is allowed to non-mobile sales within the CS zone. He noted
37 that the proposed Development Code is changing in several ways with regard to
38 non-mobile temporary sales, adding that currently a permit is valid for 120 days
39 with unlimited renewals. He mentioned that staff is considering that mobile and
40 non-mobile sales should be temporary, emphasizing that the repeated renewal
41 does constitute a permanent use. He pointed out that taco trucks are examples,
42 noting that they are temporary because they move around, although they are
43 located on the same sites on a regular basis. He noted that the threshold listed on
44 the top of page 112 specifically addresses pumpkin lots, Christmas tree lots,
45 carnivals and similar activities. He observed that the CS zone provides for the
46 five percent outdoor sales, adding that by virtue of this provision, it could be

1 feasible to increase the temporary use sales. Referring to the suggestion of
2 increasing the five percent limit on outdoor sales, he emphasized that this is
3 beyond the purview of the Planning Commission at this time, based upon the
4 notification that has already been provided, adding that this could be addressed,
5 through proper notification, at a later time. He mentioned that Mr. Sadlo had
6 indicated that the outdoor sales for his client could be contained within the five
7 percent limitation.

8
9 Referring to the five percent limitation on outdoor sales within the CS zone, Mr.
10 Bunnell emphasized that this is one of the issues that staff is purposely not
11 attempting to address use issues within these particular text amendments, adding
12 that there are a lot of issues that would have to be addressed at some future point.

13
14 Mr. Sparks reiterated his early statement that these amendments would not change
15 the permitted uses of property, emphasizing that the five percent outdoor sales
16 issue actually involves a land use scenario.

17
18 Observing that he is aware that not all of these issues would be addressed through
19 these amendments, Commissioner Maks suggested that Mr. Platt and Mr. Grady
20 should participate in the next Code Review process, and questioned whether the
21 outdoor living displays fits within the five percent outdoor sales.

22
23 Mr. Sparks clarified that the Development Code states that accessory open-air
24 sales display storage shall constitute no more than five percent of the gross
25 building floor area of any individual establishment.

26
27 Commissioner Maks noted that any applicant who wishes to go beyond the five
28 percent could apply for a Type 1 application if the threshold area on page AP-112
29 – Temporary Non-Mobile Sales is improved.

30
31 Mr. Sparks agreed that this would provide a more adequate description, and
32 addressed comments that had been made by Mr. Grady. Referring to the
33 Development Control Areas (DCA), he noted that this is also related to Mr. Platt's
34 question and clarified that as much as possible, staff has attempted to retain as
35 much existing text as possible. He pointed out that it is within the purview of the
36 Planning Commission to make any necessary changes, adding that that
37 Commissioner Maks is correct that three levels of tree removal applications have
38 been established. He mentioned that it is conceivable that if the text requirement
39 is changed, there could be concurrent subdivision and tree removal applications,
40 which would be inclusive of all of the trees that an applicant would like to
41 remove.

42
43 Referring to Town Center (TC) adjustment, Mr. Sparks pointed out that the
44 existing Development Code does include a special procedure for adjustments in
45 the Town Center/Mixed Use (TC/MU) area, noting that this has been eliminated
46 and that any zone within the City of Beaverton, with the exception of the

1 Regional Center (RC) zones, is eligible for a minor or major adjustment. He
2 stated that this has been brought forward because the City Council had established
3 those procedures on appeal of the RC text several years ago.
4

5 Commissioner Maks requested clarification of whether this had been limited to
6 the percentage that CRAC had established.
7

8 Mr. Sparks advised Commissioner Maks that he does believe that this had been
9 limited to the percentage that CRAC had established, adding that this had been
10 from ten percent up to fifty percent.
11

12 Commissioner Maks explained that the Planning Commission had approved ten
13 percent within the RC, adding that it had been appealed and been changed to 25%
14 by the City Council, although any application greater than ten percent would
15 require a variance.
16

17 Mr. Bunnell clarified that there are two levels of adjustment, minor and major,
18 explaining that up to ten percent is minor, up to fifty percent is major, and more
19 than fifty percent requires a variance.
20

21 Commissioner Maks stated that the percentage on a minor adjustment on this text
22 is less than the percentage of the minor in the ratio, adding that this is what the
23 Planning Commission had originally adopted.
24

25 Commissioner Johansen questioned what percentage applies in the RC zone.
26

27 Mr. Sparks explained that up to 25% would be a minor adjustment and that a
28 major adjustment is unlimited.
29

30 Mr. Bunnell pointed out that the text in front of the Planning Commission at this
31 time is the same text that the City Council adopted for the RC zones, adding that
32 staff has not proposed any changes. On question, he advised Commissioner
33 Johansen that up to 25% is a minor adjustment and that a major adjustment could
34 be up to 100%.
35

36 Commissioner Maks emphasized that these percentages apply to all numerical site
37 development requirements.
38

39 Mr. Sparks noted that Mr. Grady had also identified a change in the fee
40 ownership, observing that residential development is no longer eligible for a fee
41 ownership. He explained that the CRAC had agreed upon a certain procedure,
42 adding that a residential would involve a PUD, rather than a fee ownership. He
43 pointed out that the CC&Rs and maintenance agreement would be reviewed and
44 addressed with the Building Official in order to revise the text appropriately.
45

1 Chairman Voytilla suggested that it might also be necessary to review the State
2 codes that regulate PUDs and Planning Communities.

3
4 Mr. Sparks assured Chairman Voytilla that applicable State requirements would
5 also be considered. Referring to Mr. Grady's statement regarding the proposed
6 reduction of access standards from 25 to 20 feet, he noted that Mr. Grady had also
7 provided some possible language. He pointed out that this is the type of text that
8 staff had attempted to minimize and/or remove from the Development Code,
9 observing that it would be necessary to determine certain factors, as possible: 1)
10 what is acceptable; 2) who determines what is acceptable; and 3) on what criteria
11 this would be acceptable. He mentioned that some properties do not even have
12 twenty feet of frontage available, which is a continuing challenge, adding that
13 future amendments could possibly address this issue.

14
15 Mr. Bunnell referred to Mr. Grady's comments regarding the threshold of design
16 review, specifically Type 2 and Type 3 applications, and not wanting to repeat the
17 120-day process to simply widen a road. He mentioned that there are many
18 thresholds, noting that only one of these thresholds needs to be addressed for that
19 particular process and that it might be appropriate to introduce some language to
20 clarify the intent of the process.

21
22 Commissioner Maks pointed out that on several occasions the Planning
23 Commission has conditioned an applicant almost to the point where it becomes
24 necessary to purchase additional property in order to fulfill infrastructure
25 requirements that have been imposed. Observing that this sometimes occurs at
26 the completion of the process, he suggested that this should be clarified to assure
27 that the applicant does not find it necessary to repeat the process. He emphasized
28 that these requirements are imposed to make things better, not worse, for the
29 surrounding community.

30
31 Mr. Sparks emphasized that this involves a difficult issue that staff is attempting
32 to address with at this time, and discussed an application in which the Board of
33 Design Review had conditioned a right turn lane on the Hall/Greenway
34 intersection. He noted that the staff had been concerned with the fact that all
35 necessary adjacent property owners had received the appropriate notification and
36 had not responded until after a decision had been made. He explained that when
37 staff reviews projects such as a land division, a CUP or a design review, they can
38 identify, through traffic analysis or some other means, that an improvement
39 beyond which is proposed by the applicant would be necessary, emphasizing that
40 a problem is created when such an issue is raised at the end of a project and that
41 he has yet not been able to determine any firm solution.

42
43 Commissioner Maks pointed out that everyone, including the public, has a
44 responsibility with regard to guiding the development within the City of
45 Beaverton. He emphasized that any citizen receiving notification causing any

1 concern regarding their property has a responsibility to show up at the appropriate
2 meeting and obtain the necessary information.

3

4 Mr. Sparks advised Commissioner Maks that staff would be addressing the
5 Planning Commission with respect to these issues at some future time. Referring
6 to Ms. Prentice's concern with regard to the date and time that an appeal is due to
7 be filed, he mentioned that the date and time is identified within the actual Land
8 Use Orders for Type 3 decisions or appeals of Type 2 decisions. He agreed that
9 the date and time that an appeal is due could also be added to other notifications,
10 adding that this could start the following day.

11

12 Commissioner Johansen expressed concern with the availability of public records
13 to the public with respect to the ten-day appeal period.

14

15 Mr. Sparks observed that all the Development Services records are open to the
16 public, emphasizing that no hidden files exist. He expressed concern with Ms.
17 Prentice's comments, noting that this should not have occurred, adding that once a
18 Land Use Order is signed and dated, it is placed in the mail and the ten-day appeal
19 period begins at that time. He noted that there is a possibility that a notification
20 might take longer than usual to reach a recipient, although he has no way of
21 knowing. On question, he advised Commissioner Johansen that each application
22 would have its own file that is available for public inspection.

23

24 Commissioner Maks suggested that if all stakeholders are in the ballgame and
25 fulfilling their responsibility from the beginning, they should be aware of when a
26 decision is made, adding that receiving notification is merely a formality.

27

28 Mr. Sparks agreed that it is a reasonable expectation that this information would
29 be known to anyone participating in a decision.

30

31 Commissioner Johansen referred to Section 50.45.16, and questioned whether Mr.
32 Sparks had received his e-mail highlighting his concerns.

33

34 Mr. Sparks informed Commissioner Johansen that he had received his e-mail,
35 adding that an option available to the decision-making authority at the conclusion
36 of the consideration of an item would be specifically to hold the record open for a
37 period of time. He clarified that State statute provides that any member of the
38 public may request and demand that the record be held open for at least seven
39 days in order to augment that record. He mentioned that he has discussed this
40 issue with the City Attorney extensively and that they are considering possible
41 revisions of the text to address Commissioner Johansen's question, adding that a
42 feasible solution would be to continue an item to a date certain.

43

44 Commissioner Maks mentioned that this had been discussed during Code Review,
45 noting that generally a request to hold the record open is to allow an attorney
46 adequate time in which to prepare a case for an appeal to overturn a decision. He

1 expressed his opinion that if a procedure is adopted for holding the record open to
2 receive additional information from an applicant, this new information could be
3 factored into a decision. He requested clarification of whether the public is
4 allowed to comment regarding this new information.

5
6 Assistant City Attorney Ted Naemura clarified that under State law an applicant
7 request would automatically allow some relief with regard to the 120-day rule.
8 He explained that he is personally unaware of any action to keep the record open
9 that has been utilized by a represented applicant as a means of hiding material
10 from the public, expressing his opinion that it is necessary to limit the scope of
11 hypothetical situations. He emphasized that anyone interested has the option of
12 obtaining information at the Planning Counter, adding that those interested parties
13 also have rights.

14
15 Commissioner Maks observed that while he is a firm believer in following the
16 process, between ODOT and Washington County, he thinks he is losing. He
17 mentioned that there could be an application in which the record is left open
18 without a decision, at which point the applicant presents new and valuable
19 information that reverses decision. He expressed concern that the Public Hearing
20 has been closed, leaving the record open, and requested clarification of whether
21 the public would be allowed to address the new information, as presented.

22
23 Mr. Naemura advised Commissioner Maks that the public is specifically allowed
24 to address any new information that has been presented, adding that State statute
25 limits testimony to actual participants. He explained that basically the purpose of
26 the ordinance language with respect to these matters is to duplicate this State
27 ordinance within the City records to be certain that this information is provided to
28 anyone who reads the Development Code.

29
30 Commissioner Maks expressed his opinion that there has been a breakdown in
31 procedure if new evidence is accepted and the public is not allowed to comment
32 on the new evidence because they did not provide any testimony on the original
33 evidence.

34
35 Observing that these issues persist, Mr. Naemura commented that nothing in this
36 proposal would change the public's rights that are guaranteed by State law. He
37 emphasized that sometimes it is inevitable that the applicant and the Planning
38 Commission would not have enough common ground.

39
40 Commissioner Maks pointed out that this is exactly why he prefers an outright
41 denial to a continuance, adding that it is important that a decision is perceived as
42 being fair to everyone concerned.

43
44 Commissioner Maks **MOVED** and Commissioner Johansen **SECONDED** a
45 motion to continue 1) TA 2001-0001 – Chapter 40 Update Text Amendment; 2)
46 TA 2001-0002 – Chapter 50 Update Text Amendment; 3) TA 2001-0003 –

1 Chapter 10 Update Text Amendment; 4) TA 2001-0004 – Chapter 60 Update Text
2 Amendment; 5) TA 2001-0005 – Chapter 90 Update Text Amendment; 6) TA
3 2001-0007 – Beaverton Municipal Code Text Amendment; and 7) TA 2001-0008
4 – Chapter 20 Update Text Amendment to a date certain of November 14, 2001.

5
6 Motion **CARRIED**, unanimously.

7
8 Mr. Sparks requested that the Planning Commissioners consider the procedure
9 with which they would like to address these applications during the continuance
10 on November 14, 2001.

11
12 Chairman Voytilla advised Mr. Sparks of his intent to review the amendments
13 chapter by chapter.

14
15 Observing that it might not be possible to address all chapters during one meeting,
16 Mr. Sparks suggested that chapters that should be addressed first should be
17 identified.

18
19 Chairman Voytilla proposed that the chapters should be addressed in the order in
20 which they are listed.

21
22 Commissioner Maks expressed his opinion that the amendments should be
23 reviewed chapter-by-chapter, section-by-section.

24
25 On question, Chairman Voytilla informed Commissioner Johansen that the
26 discussion of one chapter could easily influence another chapter.

27
28 Observing that Chapters 40 and 50 are the basis for the entire Development Code,
29 Mr. Sparks emphasized that these should be reviewed first.

30
31 **APPROVAL OF MINUTES:**

32
33 Chairman Voytilla noted that the minutes of the meetings of October 3, 2001 and
34 October 17, 2001 would be reviewed and approved at the meeting of November
35 14, 2001.

36
37 **MISCELLANEOUS BUSINESS:**

38
39 The meeting adjourned at 9:19 p.m.